IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5126 OF 2005

Satish @ Motya Jagannath Pasalkar. ..Applicant.

V/s.

State of Maharashtra. ..Respondent.

Ms.Pranali Kakade, for applicant.

Ms.S.D.Shinde, APP for State.

CORAM: A.M.KHANWILKAR,J

DATE : OCTOBER 17, 2005.

P.C. :

1. Heard counsel for the parties. This is second bail application. First bail application was rejected on merits on 21st September, 2004. In my opinion, there is no change in circumstance to entertain this application. Counsel for the applicant however contends that the applicant has been enlarged on bail by the Aurangabad Bench of the Bombay High Court in C.R.No.I-134-2003 registered by Nagar Taluka Police Station pertaining to the incident which occured on the previous night i.e. on 22nd September, 2003 for alleged offence under sections 302, 394 read with Section 34 of the Indian Penal Code and sections 3, 4 and 25 of the Arms Act. Ordinarily, if the co-accused similarly placed is

enlarged on bail, that can be the ground for consideration of prayer for bail being changed circumstance. In the present case, however, the applicant is not relying on the order passed in favour of the co-accused but relies on the order passed by the Hon'ble High Court at Bombay (Bench at Aurangabad) in some other criminal case instituted against the applicant. That will not help the applicant. According to the applicant, said case is registered by the Ahmednagar Police Station. The offence in question and both the offences are committed in succession. In my opinion, that cannot be a ground to hold that there is changed circumstance. In the case before the Aurangabad Bench, no material was forthcoming to implicate the applicant. No identification parade was conducted. That is not the position in the case registered against the applicant by Daund Police Station, Pune Gramin being C.R.No.106 of 2003 under section 302, 323, 449, 504, 506 r/w 34 of the I.P.C. and 3(25) of Arms Act, with which we are concerned. There is ample evidence against the applicant. Identification parade has also been conducted in which applicant has been identified. Suffice it to observe, on merits case of the applicant has been considered on the earlier occasion and cannot be allowed to be reopened

unless there is changed circumstance. In my opinion, this application should fail. Hence the same is rejected.

2. I am informed that charge has already been framed in respect of Sessions Case No.2 of 2004 arising out of the C.R.No.106 of 2003, registered by Daund Police station, Pune Gramin for the offence under sections 302, 323, 449, 504, 506 read with 34 of the Indian Penal Code and 3(25) of Arms Act. If it is so, Trial Judge be well-advised to conduct the trial on day to day basis and preferably to conclude the same within 6 months from the date of communication of this order. In case, there are any other older matters pending than the Sessions Case No.2 of 2004 before the Trial Judge, he shall proceed to hear those matters first. However, if it is not possible for the trial Judge to proceed with the trial of this case, necessary directions can be passed for assigning the trial to Fast Track court to dispose of the case expeditiously. Trial Judge shall not accede to the request for adjournment unless it is imperative. In the event trial Judge is of the opinion that co-accused is responsible for adjournment of the trial, Trial Judge may proceed to pass necessary orders to ensure that the trial is

conducted expeditiously. Ordered accordingly.